

OXMAN TULIS KIRKPATRICK WHYATT & GEIGER LLP

THOMAS M. GEIGER  
STUART E. KAHAN\*  
JOHN B. KIRKPATRICK  
MARC S. OXMAN  
LOIS N. ROSEN  
GREGORY J. SPAUN\*  
MARK S. TULIS  
THOMAS WHYATT

120 BLOOMINGDALE ROAD  
WHITE PLAINS, NEW YORK 10605  
(914) 422-3900  
(914) 422-3636 (fax)  
www.oxmanlaw.com

IN ASSOCIATION WITH:  
DAVIDOFF, MALITO & HUTCHER, LLP\*\*

OF COUNSEL  
KENNETH G. RAY, P.C.  
BRIAN J. STONE

LEGAL ASSISTANTS  
JO-ANN R. SCHLESINGER  
PAMELA G. PUCCI  
LAURA CURLEY

\*ALSO ADMITTED - NEW JERSEY  
\*ALSO ADMITTED - CONNECTICUT

MEMO ENDORSED

August 5, 2008

VIA OVERNIGHT MAIL

Hon. Kenneth M. Karas  
United States District Judge  
United States Courthouse  
Chambers 533  
300 Quarropas Street  
White Plains, New York 10601-4150

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: \_\_\_\_\_

Re: Jeffrey Deskovic v. City of Peekskill, et al.  
07 Civ. 8150 (KMK)(GAY)  
Linda McGarr, et al. v. City of Peekskill, et al.  
07 Civ. 9488(KMK)(GAY)

**Request for reconsideration of this court's July 29, 2008 endorsement**

Dear Judge Karas:

This office is of counsel to Westchester County Attorney Charlene Indelicato and represents defendants Westchester County, Louis Roh, Millard Hyland and George Bolen in the above-captioned matters.

We are in receipt of this court's endorsement dated July 29, 2008 which endorsement was electronically filed on August 1, 2008. Although not specifically stated, it is apparent from the court's endorsement that the request by defendant Bolen for a pre-motion conference in anticipation of moving to dismiss the first amended complaints pursuant to Federal Rules of Civil Procedure, Rule 12 (b)(6) was denied. On behalf of defendant Bolen,

NEW YORK CITY\*\*  
605 THIRD AVENUE  
NEW YORK, NEW YORK 10158  
(212) 557-7200  
(212) 286-1884 (FAX)

WASHINGTON, D.C.\*\*  
444 NORTH CAPITOL STREET, N.W.  
WASHINGTON, D.C. 20001  
(202) 347-1117  
(202) 638-6784 (FAX)

LONG ISLAND\*\*  
200 GARDEN CITY PLAZA, STE. 315  
GARDEN CITY, NY 11530  
(516) 248-6400  
(516) 248-6422 (FAX)

ALBANY\*\*  
150 STATE STREET  
ALBANY, NY 12207  
(518) 465-8230  
(518) 465-8650 (FAX)

OXMAN TULIS KIRKPATRICK WHYATT & GEIGER LLP

August 5, 2008

Page 2

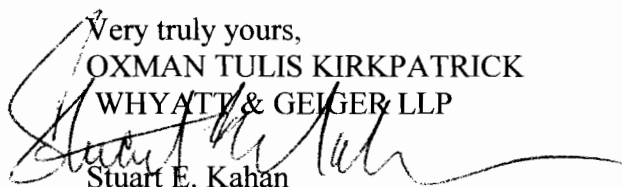
we respectfully request that the court reconsider its determination and schedule a pre-motion conference or alternatively, set a briefing schedule for the motion to dismiss in these two matters. This court, in its July 29, 2008 endorsement, stated "...plaintiffs have alleged that Bolen was involved in an post-indictment investigation that would be outside the scope of any immunity claim." It is defendant Bolen's position that whether his actions constitute investigatory or trial preparation activity, is a legal issue which should be resolved at the earliest possible stage of this litigation.

While defendant acknowledges that the issuance of an indictment does not mean that subsequent activity could not be considered investigative, it is defendant's position that assuming the facts in the first amended complaints to be true, that Bolen's actions are protected by absolute prosecutorial immunity.

Since defendant Bolen believes a legal issue is presented on the issue of absolute immunity, should this court deny the motion to dismiss, then defendant Bolen would be entitled to an immediate appeal of that determination. No immediate appeal lies from this court's directive allowing plaintiff Deskovic to amend his complaint.

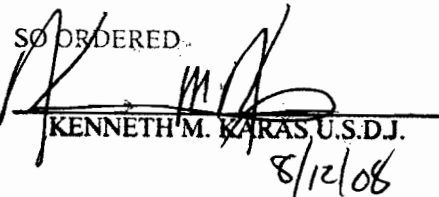
It is therefore respectfully requested that the court reconsider its July 29, 2008 endorsement order and either schedule a pre-motion conference or alternatively, set a briefing schedule in order to allow defendant Bolen to move to dismiss the first amended complaints of plaintiffs Deskovic and McGarr.

We thank the court for its attention to this matter.

Very truly yours,  
OXMAN TULIS KIRKPATRICK  
WHYATT & GEIGER LLP  
  
Stuart E. Kahan

cc:

The Court will hold a conference  
on September 16, 2008, at 3:00

SO ORDERED.  
  
KENNETH M. KARAS, U.S.D.J.  
8/12/08

OXMAN TULIS KIRKPATRICK WHYATT & GEIGER LLP

August 5, 2008

Page 3

Nick Brustin, Esq.  
Cochran Neufeld & Scheck  
99 Hudson Street  
New York, New York 10013 (via overnight mail)

Eric Hecker, Esq.  
Emery, Celli, Brinckerhoff & Abady, LLP  
75 Rockefeller Plaza - 20<sup>th</sup> Floor  
New York, New York 10019 (via overnight mail)

Brian Sokoloff, Esq.  
Miranda Sokoloff Sambursky Slone Verveniotes, LLP  
240 Mineola Blvd.  
Mineola, New York 11501 (via overnight mail)

James A. Randazzo, Esq.  
Gelardi & Randazzo, LLP  
151 Broadway  
Hawthorne, New York 10532 (via overnight mail)

William Florence, Esq.  
City of Peekskill Department of Law  
City Hall  
840 Main Street  
Peekskill, New York 10566 (via overnight mail)

James Mitchell, Esq.  
Stillman Friedman & Shechtman, P.C.  
425 Park Avenue  
New York, New York 10022 (via overnight mail)

Lori Anne Fee, Esq.  
Wellinghorst & Fronzuto  
4 Franklin Avenue  
Ridgewood, New Jersey 07450 (via overnight mail)

John Knudsen, Esq.  
Richard Brewster, Esq.  
Office of the Attorney General  
120 Broadway  
New York, New York 10271 (via overnight mail)